

Appl. No.: 09/816,652

Amendment Dated: 11/29/2005

Reply to OA of 6/29/2005

**REMARKS**

This amendment is responsive to the Action dated June 29<sup>th</sup>, 2005 and in association with a Request for Continued Examination (RCE) filed herewith.

In the Action, the rejection to claims 1-8, 13-20, 25-32 and 37-41 was maintained, while claims 9-12, 21-24 and 33-36 were merely objected to as being dependent upon rejected base claims. Applicant would like to thank the Examiner for the identification of patentable subject matter.

With this response, claims 1-41 remain pending. Applicant offers the following remarks effectively traversing the basis for rejection. Applicant believes the following remarks to be fully-responsive to the outstanding action. Upon entry of this response, reconsideration of the pending application is respectfully requested.

**§102(e) Rejection of Claims 1-6, 8, 13-18, 20, 25-30, 32 and 37-41**

In paragraphs 1 and 2 of the Action, claims 1-6, 8, 13-18, 20, 25-30, 32 and 37-41 were rejected as being anticipated by a patent issued to Best, et al. (USP 6,738,363) pursuant to 35 USC §102(e). In response, Applicant respectfully traverses the rejection of such claims.

With this response, Applicant respectfully submits that the Action has failed to establish a prima facie basis for rejection of claims 1-6, 8, 13-18, 20, 25-30, 32 and 37-41 as being anticipated by the Best reference. Applicant notes that an anticipation rejection under 35 USC § 102 requires the disclosure in a single prior art reference of each element of the claim under consideration. See *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987).

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It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, “[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added). “The *identical invention* must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP § 2131 (emphasis added).

Applicant respectfully submits that the Action has failed to point to support in the Best reference that discloses *identical invention* as claimed in, e.g., rejected claims 1, 13, 25 or 37. Rather, the Action points to several disparate (isolated) passages within the Best reference, none of which anticipate or suggest scheduling time slots and frequency blocks **within a communication channel** for the service flow request. In the Best reference, a communication channel is explicitly defined as a “given frequency” (col. 2, lines 1-2). Accordingly, Best fails to anticipate or suggest a communication channel comprising multiple frequencies from which a scheduler will allocate frequency blocks.

Accordingly, Applicant respectfully submits that the Action has failed to provide a citation to the Best reference that teaches each and every element of the rejected claim, as presented within that claim. Thus, Applicant respectfully requests that the §102(e) rejection of such claims be withdrawn.

Applicant notes that claims 2-6, 8, 14-18, 20, 26-30, 32 and 38-41 each depend from patentable base claims 1, 13, 25 or 37, respectively, and are likewise patentable over the Best

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reference by virtue of at least such dependency. Accordingly, Applicant respectfully requests that the §102(e) rejection of such claims be withdrawn.

**§103(a) Rejection of Claims 7, 19 and 31**

In paragraphs 3 and 4 of the Action, claims 7, 19 and 31 are rejected as being unpatentable over the Best reference, pursuant to 35 USC §103(a). In response, Applicant traverses such rejection.

At the onset, Applicant thanks the Examiner for taking the time to more particularly point out the language in the Best reference relied upon as forming the foundation for the rejection of such claims.

Applicant respectfully submits, however, that the citations, e.g., col. 2, lines 18-20; col. 3, lines 45-48, 59-62; and col. 15, lines 23-26, merely describe the difficult in solving resource allocation problems in a real-time fashion. That is, none of the citations relied upon disclose or suggest the claimed limitation of guaranteeing a real-time data rate.

Applicant respectfully submits that the allocation of a variable data rate channel is characteristic of the limitations commonly associated with the prior art, which the claimed invention seeks to overcome. In particular, to support certain applications on wireless handsets that have become increasing popular after the filing of the Best reference, e.g., audio/video application, a guaranteed bandwidth and data-rate is required to provide a meaningful user experience. Thus, this conventional VBR approach may, in many cases be insufficient.

Thus, in contrast to the characterization in the Action, the teaching of VBR actually teaches away from that which is claimed in rejected claims 7, 19 and 31, namely, the idea of a service class requiring allocation of guaranteed real-time data rate channel. In this regard,

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Applicant respectfully submits that one skilled in the art would not, necessarily find motivation within the Best reference to extend the VBR as suggested by the Action.

Insofar as the citations relied upon fail to disclose or suggest guaranteeing a real-time data rate, and that the VBR (posed in the Action as an equivalent) is actually representative of the prior art that the claimed invention was designed to overcome, Applicant respectfully submits that the Action has failed to provide a prima facie basis for the rejection of claims 7, 19 and 31. Accordingly, Applicant respectfully requests that the §103(a) rejection of claim 7, 19 and 31 be withdrawn.

#### CONCLUSION

Applicant respectfully submits that claims 1-41 are in condition for allowance and such action is earnestly solicited. *The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application.*

Please charge any shortages and credit any overcharges to our Deposit Account number 50-0221.

Respectfully submitted,  
MANISH AIRY

Date: November 29, 2005    by: /s/ Michael A. Proksch / Reg. No. 43,021 /  
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